

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES H. JONES,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
KENNETH KYLER et al.,	:	No. 02-9510
Respondents.	:	

ORDER

AND NOW, this 19th day of January, 2007, upon careful and independent consideration of James H. Jones's petition for Writ of *Habeas Corpus* (Docket No. 1), and after review of the Report and Recommendation of United States Magistrate Judge Charles B. Smith dated July 22, 2003 (Docket No. 16) and the Report and Recommendation of Magistrate Judge Smith dated August 3, 2005 (Docket No. 42), it is **ORDERED** that:

1. The July 22, 2003 Report and Recommendation (Docket No. 16) is **APPROVED** and **ADOPTED** with respect to Petitioner's claims 1, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17 and 18;
2. The August 3, 2005 Report and Recommendation (Docket No. 42) is **APPROVED** and **ADOPTED** with respect to Petitioner's claims 2, 3, 8, 9, 15 and 16;¹

¹ On July 23, 2004 the Court of Appeals for the Third Circuit granted Mr. Jones's request for a certificate of appealability and vacated the Court's Orders entered August 15, 2003 (Docket No. 19) and October 24, 2003 (Docket No. 23), which approved and adopted Magistrate Judge Smith's July 22, 2003 Report and Recommendation (Docket No. 16) and denied Petitioner's petition for Writ of *Habeas Corpus*. The Court of Appeals remanded this action with instructions to obtain the state court record in Petitioner's criminal case and to "reconsider the habeas petition as to exhaustion and procedural default, and, as appropriate, the merits of [Mr. Jones's] claims." *Jones v. Kyler*, 2004 U.S. App. LEXIS 21082, at *1 (3d Cir. July 23, 2004). Following the remand, with the benefit of the extensive and voluminous record from Petitioner's state court proceedings, Magistrate Judge Smith reconsidered Mr. Jones's petition for Writ of *Habeas Corpus* and issued the August 3, 2005 Report and Recommendation (Docket No. 42).

In the August 3, 2005 Report and Recommendation, Magistrate Judge Smith analyzed

3. The petition for Writ of *Habeas Corpus* (Docket No. 1) is **DENIED** with prejudice.
4. There is no probable cause to issue a certificate of appealability.
5. The Clerk of the Court shall mark this case closed for statistical purposes.

BY THE COURT

S/Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge

Petitioner's claims that had been dismissed pursuant to the Court's August 15, 2003 and October 24, 2003 Orders due to Petitioner's failure to exhaust state remedies and on procedural default grounds, namely, claims 2, 3, 8, 9, 15 and 16. The Magistrate Judge's thoroughness is demonstrated, in part, by his determination that certain initial conclusions on procedural grounds were in error, thereby prompting an in-depth substantive analysis of those issues. Magistrate Judge Smith's August 3, 2005 Report and Recommendation did not reconsider Petitioner's claims that were adjudicated on the merits in the July 22, 2003 Report and Recommendation, namely, claims 1, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17 and 18. The Court has, with the benefit of Petitioner's full state court record, carefully and independently reconsidered Petitioner's claims 1, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17 and 18. The Court concludes that Magistrate Judge Smith's July 22, 2003 Report and Recommendation (Docket No. 16) correctly assessed those claims. Therefore, as stated in this Order, the Court also approves, and adopts, the July 22, 2003 Report and Recommendation with respect to claims 1, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17 and 18.